



AUDIT POLICY UPDATE

Volume 5, Number 1

Office of Regulatory Enforcement

Spring 2001

Outreach Programs Expand Use of EPA's Audit Policy

2,000 Tons of Volatile Organic Compounds Reduced From Petroleum Above-Ground Storage Tanks

Disclosures under EPA's Audit Policy continued to reach record levels in 2000 as the Agency promoted the disclosure and correction of violations in specific sectors.

The Agency continues to promote compliance through the use of the Audit Policy, and has extended its applicability recently to a number of priority areas and sectors such as:

- ① Above-ground storage tanks
- ② Wetlands
- ③ Universities
- ④ Nitrate compounds
- ⑤ 'Non-road' engines
- ⑥ Grain producers
- ⑦ Telecommunications companies

- ⑧ Airlines
- ⑨ Iron and steel 'minimills'

In fiscal year 2000 alone, more than 425 companies disclosed potential violations at nearly 2,200 facilities. More than 215 companies corrected and received penalty relief for violations at approximately 435 facilities in 2000, as well as 72 companies and 455 facilities in the first quarter of 2001. These numbers represent a continuing increase in the number of disclosures made annually under the Audit Policy.

Since 1995, when the Audit Policy became effective, more than 1,150 companies have disclosed potential

Continued on page 2

EPA Revises Audit, Small Business Policies

To expand its regulatory compliance incentives program, EPA recently revised its two self-disclosure policies, the Audit Policy and the Small Business Compliance Policy.

After a two-year evaluation, EPA revised the policies based on extensive public outreach and the Agency's experience in handling self-disclosure cases. Businesses that meet policy conditions are eligible for penalty reductions and waivers and other benefits; however, both policies prohibit benefits to companies for certain violations, such as those that may result in serious harm or risk, those that reflect repeated noncompliance, or those in which corporate officials condone criminal behavior. In addition, the policies allow EPA to recover economic benefits from violating companies to ensure businesses that comply with environmental laws are not put at a competitive disadvantage by those not complying.

Key revisions to the Audit Policy include lengthening the amount of time from 10 to 21 days that entities have to disclose a violation after it is discovered; clarifying

**See 'Policies Revised'
on page 2**

Snapshot

Results of Recent Audit Policy Programs

- ✓ **Volatile Organic Chemicals Reduced: 2,021 Tons Annually**
- ✓ **Wetlands Acreage Restored: 2,000 plus**
- ✓ **TRI Reporting of Nitrate Compounds—Companies Reporting 1st Time or Correcting Form Rs: 135**
- ✓ **New Spill Prevention, Control and Countermeasure Plans: 246**
- ✓ **Sulfuric Acid, Diesel Fuel, Lead Reported to Emergency Responders: 5.5 Million Pounds**
- ✓ **Carbon Monoxide Reduced: 644 Tons Annually**

Continued from page 1

violations at more than 5,400 facilities.

1 Above-ground Storage Tanks

Under EPA's Storage Tank Emission Reduction Partnership Program developed with the American Petroleum Institute (API), 61 companies nationwide have voluntarily agreed to install emission controls on approximately 866 above-ground storage tanks from 318 facilities. These emission controls are expected to reduce volatile organic compounds (VOCs) by 2,000 tons annually—equivalent to removing about 76,000 cars from the nation's roads.

EPA believes that the joint program is an excellent example of how government and industry can work cooperatively to achieve significant environmental benefits.

Companies participating in the Clean Air Act compliance incentive program include those with above-ground tanks that store substantial quantities of volatile organic liquids, including petroleum products (e.g., refineries, gasoline distribution terminals, chemical plants and other facilities). Under this cooperative program, companies agreed to install enhanced emission control devices on their above-ground storage tanks that are equipped with fittings called "slotted guidepoles."

Slotted guidepoles are slender columns built on the inside of the tank that run through the floating roof from the top to the bottom of the tank to

prevent the roof from rotating. Slotted guidepoles have slots or perforations to allow for fuel sampling and drainage. While the guidepoles enable accurate sampling to be conducted for environmental compliance and product quality purposes, they also allow release of VOCs into the air.

In return for companies' participation, EPA agreed to eliminate any penalties from companies that agree to audit, disclose, and correct leaks from slotted guidepoles. Companies had until June 12 to register for the program and submit a participation agreement to EPA by Dec. 11, 2000. Participating companies also agreed to install acceptable controls no later than June 13, 2002. More time will be allowed for those tanks that must be taken out of service to install these controls.

The slots and the space between the guidepoles and the tank's roof are observable emission pathways that violate the "no visible gap" prohibition in the Standards of Performance for Petroleum and Organic Liquid Storage Vessels (NSPS Subparts Ka and Kb). 40 CFR 60.112a(a) and 60.112b(a).

The petroleum industry conducted extensive research on emissions from slotted guidepoles and developed and tested the effectiveness of enhanced control technologies. EPA independently verified this research and mission estimate method and controls developed by API.

Details of the compliance program were published in the Federal Register on April 13, 2000 (<http://www.epa.gov/fedrgstr/EPAFR-CONTENTS/2000/>

<http://www.epa.gov/apr/Day-13/contents.htm>). In a separate Jan. 14, 2000, Federal Register notice, EPA reaffirmed prior determinations that uncontrolled slotted guidepoles do not comply with the "no visible gap" requirement in

Continued on page 3

Policies Revised/ from Page 1

that a facility may qualify for Audit Policy credit even if another facility owned or operated by the same parent organization is already the subject of an inspection, investigation or information request; clarifying that companies will have at least 21 days to disclose violations discovered at newly-acquired facilities; and clarifying that the repeat violations will not disqualify newly-acquired facilities if the prior violations were not from the acquiring companies.

The Small Business Compliance Policy, available for companies with 100 or fewer employees, reduces or waives penalties for small businesses that disclose and make good faith efforts to correct violations, provided they meet the criteria in the policy. The revised Small Business Compliance Policy lengthens the amount of time from 10 to 21 days that entities have to disclose a violation after discovery; and expands the number of ways that the violations can be discovered. Both policies were published in the April 11 *Federal Register Notice* (Vol. 65, No. 70), and took effect May 11 (see <http://www.epa.gov/oeca/polguid/enfdock.html>).

AUDIT POLICY UPDATE

The *Audit Policy Update* is published periodically by EPA's Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance. The newsletter is intended to provide information to the public and regulated communities regarding developments under the EPA Audit Policy. Editor: Virginia Bueno, (202) 564-8684. Email: bueno.virginia@epa.gov. Co-Editor: Leslie A. Jones, (202), 564-5123; Email: jones.leslie@epa.gov. Change of address or subscription requests should be sent to the editor. Reproduction and wide dissemination of the newsletter are highly encouraged.

Continued from page 2

NSPS Subparts Ka and Kb (<http://www.epa.gov/fedrgstr/EPA-AIR/2000/January/Day-14/a621.htm>). **Contact Mario Jorquera, EPA HQ, (202) 564-1079.**

2 Wetlands

In January 2000, EPA Region 4 and North Carolina's Department of Environment and Natural Resources (DENR) initiated a Self-Audit/Self-Disclosure program to convince 95 landowners who illegally ditched 11,400 acres of wetlands to voluntarily restore their sites. EPA and DENR initiated this program because of limited staff resources and to provide an opportunity for violators to restore their illegally ditched wetlands with no monetary penalties. Region 4 and DENR published this initiative in local newspapers.

Ten landowners agreed to participate in the self-audit program. These 10 sites comprised approximately 3,600 acres of illegally ditched wetlands. All but one site with nine acres of wetlands have been restored or are in the process of restoration.

This program was a great success for EPA and DENR because more than 31.5 percent of the total universe of illegally drained wetlands were restored as a result of this initiative. **Contact Mike Wylie, EPA Region 4, (404) 562-9409.**

3 Universities

EPA Regions 1, 2, 3 and 9 invited local universities to audit their laboratories and other facilities, and correct environmental violations in return for reduced penalties under the Audit Policy. During past inspections of university and college campuses across the nation, Regions have found significant noncompliance with the Resource Conservation and Recovery Act (RCRA); the Spill Prevention, Control and Countermeasure (SPCC) requirements of the CWA; underground storage tank management; and the CAA.

Specific examples of noncompliance include improperly handling and disposing of hazardous waste materials; boilers and furnaces that do not meet clean air regulations; inadequate monitoring of underground storage tanks; sewage treatment facilities that are not operating

properly; and improper abatement of lead-based paint and asbestos.

As part of an integrated compliance strategy, Regions provided focus groups, compliance workshops and materials to numerous universities and colleges to ensure that these academic institutions are familiar with federal environmental requirements, and heightened their enforcement presence through on-site inspections. **Contact Peggy Bagnoli, EPA Region 1, (617) 918-1828.**

4 Nitrate Compounds

In April 2000, EPA launched a program to improve citizens' right-to-know about harmful chemical compounds. After conducting outreach, workshops, and compliance assistance for industry, EPA identified facilities that reported the treatment of nitric acid over 18,000 pounds and failed to file the requisite Form R for nitrate compounds.

The six primary industries responsible for most under/non-reporting were Fabricated Metals, Electronics, Food, Primary Metals, Transportation Equipment, and Chemicals.

More than 600 facilities received letters in April 2000, explaining that EPA believed they were in violation. In the letter, EPA offered to settle violations for reduced penalties with companies that agreed to participate in a compliance incentive program.

More than 300 companies that received the letter agreed to settle violations as proposed by EPA. Settlement agreements included a commitment to audit and to return more than 1,000 facilities to compliance with EPCRA Section 313. As a result, all participating facilities have certified full compliance with EPCRA Section 313

How Do I Make a Voluntary Disclosure Under EPA's Audit Policy?

Once a violation has been discovered, a company has 21 days from the time of that discovery to disclose the violation to EPA. Companies should make the disclosure to the EPA Regional Office where the affected facility is located. In the event of violations affecting more than one Region, companies should contact Leslie Jones, EPA's National Audit Policy Coordinator, at (202) 564-5123.

The disclosure should identify the means of discovery, type of violation, facility location, and how it meets the conditions of the policy. EPA encourages companies to refer to the **Optional Form for Disclosure Submittal** (<http://www.epa.gov/oeca/ore/checklist.pdf>) to assist in determining what information EPA may seek about the violation(s). Documents concerning the development of the Audit Policy, settlements under the policy, and related publications can be obtained by contacting the Audit Policy Docket at (202) 564-2119 or visiting <http://www.epa.gov/oeca/polguid/enfdock/docketC9401.html>.

Continued on page 4

Continued from page 3

and submitted more than 9,000 late or corrected Form Rs. **Contact Tom Marvin, EPA HQ, (202) 564-4282.**

5 Non-road Engines

In FY2000, EPA received disclosures affecting more than 2,200 illegal nonroad engines. The CAA requires that nonroad engines imported into the United States display labels certifying that they meet federal emission standards. EPA investigations at several U.S. ports, conducted in cooperation with the U.S. Customs Service, suggest that a number of imported engines fail to meet these labeling requirements, and a subset are not meeting emission standards. These "gray market" engines undermine the nation's air quality goals and put law-abiding equipment dealers at a competitive disadvantage.

EPA has taken many steps to bring industry into compliance such as audit settlements with importers and responding to industry requests for increased enforcement against illegal imports. For first-time violators, EPA's goal is to achieve a settlement that includes a requirement for the violator to conduct an audit and correct all prior

violations of the regulations.

All uncertified engines must be exported, but label violations may be corrected once EPA determines that the engine is certified. When uncertified engines are imported in equipment, the importers are required to correct violations by exporting the uncertified engines and providing a new certified replacement engine to the end user. **Contact Mark Siegler, EPA HQ, (202) 564-8673.**

6 Grain Producers

In November 2000, EPA Region 7 issued letters to grain processing facilities inviting them to voluntarily audit for and correct violations of the CAA's New Source Review (NSR)/Prevention of Significant Deterioration requirements.

Demand for products from this sector has steadily increased in the past decade. Existing facilities may have increased capacity by modifying process units or building new ones to meet this new demand. Increased capacity may trigger the need to obtain pre-construction permits under the CAA.

Participants will have about six months to complete an air compliance audit and disclose any potential areas of noncompliance to EPA.

Region 7 has identified the grain processing sector as an enforcement priority for 2001. EPA plans to increase overall inspections of grain processing facilities. **Contact Jan Lambert, EPA Region 7, (913) 551-7003,**

7 Telecommunications Industry

In 2000, EPA continued to encourage telecommunications companies to voluntarily disclose and promptly correct compliance problems.

In October, five companies disclosed 3,457 environmental

violations from 1,122 of their facilities in 45 states and the District of Columbia.

Under the proposed settlements, the companies will pay a total of \$329,426, the amount saved by delaying compliance with EPCRA, SPCC requirements, CAA, and RCRA. The companies and their violations included: AirTouch Communications, Inc.; EPCRA and CWA SPCC; AT&T Corp.; CAA and SPCC; AT&T Broadband, LLC. EPCRA and SPCC; NEXTLINK Communication, Inc.; EPCRA, SPCC, CAA, and RCRA; and Qwest Communications International, Inc.: EPCRA, SPCC and CAA.

Remedial actions for these companies' violations include notifying local emergency planning committees of the presence of hazardous chemicals, preparing spill prevention plans, applying for permits to construct or install standby generators, maintaining records for appliances containing more than 50 pounds of refrigerant, repairing refrigerant leaks from heating, ventilation and air conditioning units, and obtaining a letter of financial assurance demonstrating financial responsibility for corrective action or damage caused by sudden accidental releases from underground storage tanks.

Since the outset of this initiative, EPA reached penalty settlements under its Audit Policy with 24 telecommunications companies that voluntarily disclosed and corrected more than 6,200 environmental violations at more than 2,200 facilities. The companies received a 100 percent waiver of the gravity-based penalties, totaling more than \$32 million, that otherwise could have been assessed. These companies paid approximately \$607,000 in penalties in recent

Get This Publication Electronically!

You may receive an electronic subscription to *Audit Policy Update* by sending an email to: listserv@unixmail.rtpnc.epa.gov.
1. Leave the subject line blank.
2. Type the following in the body of the message: **subscribe ocorelink Your First Name Your Last Name**
3. Send the email with no further text in the body of the letter.

Continued on page 5

Continued from page 4

settlements—the amount of the economic benefit they realized through noncompliance.

These responsible companies have ensured 246 facilities now have SPCC plans in place and have reported to emergency responders and planners more than 2.3 million pounds of diesel fuel, 2.1 million pounds of sulfuric acid, and 1.4 million pounds of lead present at their facilities. **Contact Phil Milton, HQ, EPA, (202) 564-5029.**

8 Airlines

Following American Airlines' voluntary disclosure of Clean Air Act fuel standards violations in 1999, EPA sent letters to all major domestic airlines inviting them to audit and self-disclose violations. The goal was to heighten the awareness of the airline industry's environmental obligations to comply with CAA federal fuel standards, CWA storm water and spill prevention requirements, and EPCRA emergency releases reporting. In addition, EPA informed facilities of the availability of compliance information on the Transportation Environmental Resource Center (TERC) and provided highlights of applicable regulations to assist in

self-audits.

Seven airlines and one fuel supplier self-disclosed violations, five of which were settled. EPA also initiated four other investigations against two airlines and their fuel suppliers.

Last year, under the Agency's Audit Policy, EPA and American Airlines (AMR Corporation) entered into a settlement that is expected to eliminate nearly 700 tons of pollutants from the air annually. American Airlines reported the use of a high-sulfur fuel in motor vehicles at 10 major airports around the country in violation of the Clean Air Act. Under the settlement, EPA cut total penalties by more than 90 percent for

Questions About the Audit Policy?

If you have questions about EPA's Audit Policy or its applicability to specific situations, contact EPA's Audit Policy Coordinator, Leslie Jones, at (202) 564-5123. Questions may be asked without disclosing the name of the client or company.

In addition, EPA's Quick Response Team (QRT) may be consulted as a resource for cases

of first impression. Chaired by Leslie Jones, the QRT is made up of representatives from EPA Headquarters, Regions, and the Department of Justice.

The QRT was developed to ensure that determinations for eligibility under the Audit Policy are expeditious, fair and consistent nationally.

violations that the airline voluntarily disclosed and promptly corrected. The company also agreed to additional pollution reduction measures at Boston's Logan Airport. **Contact Jocelyn Adair, EPA HQ, (202) 564-1011.**

9 Iron and Steel Minimills

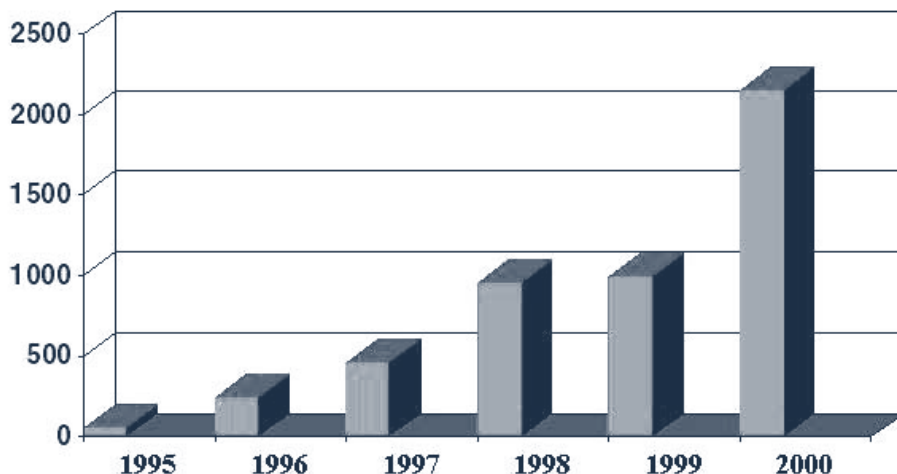
In August 2000, EPA sent letters to 41 minimills inviting them to participate in a voluntary audit and self-disclosure program based on the Audit Policy.

As a result of Agency investigations during the past few years, EPA has become increasingly concerned that serious, substantive violations of federal environmental regulations are occurring at some minimills.

Companies that chose to disclose violations had until Feb. 28, 2001, to do so. Not all minimills were sent such letters—some were excluded from the program because of ongoing investigations and/or other enforcement activities.

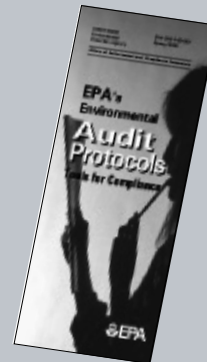
Minimills that received a letter were invited to perform an environmental audit of their facility to discover areas of noncompliance, and encouraged to consider taking advantage of EPA's Audit Policy.

Facilities Disclosing Under EPA's Audit Policy



Continued on page 8

EPA's Office of Compliance Publishes New Protocols to Aid Regulated Entities in Conducting Self-Audits



EPA's Office of Compliance has published nine environmental audit protocol manuals for businesses and organizations to perform voluntary environmental audits and disclose violations in accordance to EPA's Audit and Small Business Policies.

The audit protocols also provide technical guidance to regulated entities conducting environmental compliance audits and help ensure that audits are conducted in a thorough and comprehensive manner. Protocols are the principal

working documents used by the auditor to evaluate federal environmental compliance. EPA has produced audit protocols covering requirements under RCRA, CERCLA, EPCRA and portions of TSCA and SDWA.

The protocols can be obtained through <http://www.epa.gov/oeca/ccsmd/profile.html> The EPA Web site offers the protocols in both PDF and MS-Word formats. For greater flexibility, the word processing format allows the user to custom-tailor the protocols to more specific

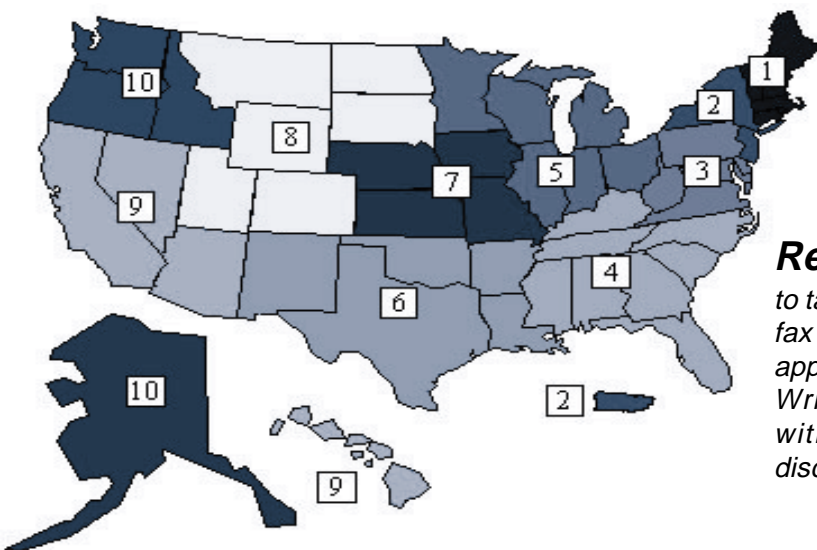
environmental aspects associated with the facility to be audited.

Hard copies of the audit protocols can be obtained by contacting EPA's National Service Center for Environmental Publications (NSCEP) at 1-800-490-9198. For more information, contact Richard Satterfield at EPA HQ at (202) 564-2456.

Audit Policy Online Resources

- | | |
|---|---|
| <p>@ Audit Policy Information Homepage
http://www.epa.gov/oeca/ore/apolguid.html</p> <p>@ Audit Policy: Incentives for Self-Policing
http://www.epa.gov/oeca/auditpol.html</p> <p>@ Audit Policy Interpretive Guidance (Questions and Answers)
http://www.epa.gov/oeca/audpolguid.pdf</p> <p>@ 'Audit Policy Update' (Newsletter)
http://www.epa.gov/oeca/ore/auditupd.html</p> <p>@ Confidentiality of Information Received Under Agency's Self-Disclosure Policy
http://www.epa.gov/oeca/sahmemo.html</p> <p>@ Memorandum--Subject: Implementation of the Environmental Protection Agency's Self- Policing Policy for Disclosures Involving Potential Criminal Violations
http://www.epa.gov/oeca/oceft/audpol2.html</p> | <p>@ Policy on Compliance Incentives For Small Businesses
http://www.epa.gov/oeca/smbusi.html</p> <p>@ Memorandum--Subject: Reduced Penalties for Disclosures of Certain Clean Air Act Violations
http://www.epa.gov/oeca/ore/caa-tit.pdf</p> <p>@ Optional Form for Disclosure Submittal
http://www.epa.gov/oeca/ore/checklist.pdf</p> <p>@ Audit Policy Evaluation
http://www.epa.gov/oeca/oppa/ape.htm</p> <p>@ 'Enforcement Alert' (Newsletter)
http://www.epa.gov/oeca/ore/enfalert</p> |
|---|---|

Who to Contact to Make a Disclosure



Regulated entities that wish to take advantage of the policy should fax or send a written disclosure to the appropriate EPA contacts listed below. Written disclosure must be made within 21 days of the violation's discovery.

■ **Region 1:** Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Contact Joel Blumstein at (617) 918-1771; fax (617) 918-1809.

■ **Region 2:** New Jersey, New York and the territories of Puerto Rico and the U.S. Virgin Islands.

Contact John Wilk at (212) 637-3918; fax (212) 637-4035.

■ **Region 3:** Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia.

Contact Samantha Fairchild at (215) 814-2999; fax (215) 814-2905.

■ **Region 4:** Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Contact Bill Anderson at (404) 562-9680; fax (404) 562-9663.

■ **Region 5:** Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Contact Tinka Hyde at (312) 886-9296; fax (312) 353-4135.

■ **Region 6:** Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Contact Charles Sheehan at (214) 665-2228; fax (214) 665-2146.

■ **Region 7:** Iowa, Kansas, Missouri, and Nebraska.

Contact Becky Dolph at (913) 551-7281; fax (913) 551-7925.

■ **Region 8:** Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Contact David Rochlin at (303) 312-6892; fax (303) 312-6339.

■ **Region 9:** Arizona, California, Hawaii, and Nevada, and the territories of Guam and American Samoa.

Contact Dan Reich at (415) 744-1343; fax (415) 744-1041.

■ **Region 10:** Alaska, Idaho, Oregon, and Washington.

Contact Jackson Fox at (206) 553-1073; fax (206) 553-0163.

■ **HQ Criminal Enforcement:** Contact Jon Jacobs at (202) 564-4037; fax (202) 501-0599 (all potential criminal violations).

■ **National Audit Policy Coordinator:** Contact Leslie Jones at (202) 564-5123; fax (202) 564-0011 (civil violations in more than one EPA Region and policy questions).



United States
Environmental Protection Agency
Office of Regulatory Enforcement
(2248A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Official Business
Penalty for Private Use \$300

Audit Policy Update

Continued from page 5

This year's minimill program is the most recent in a multi-year effort to assist this sector in achieving compliance. This focused effort began in 1996, when EPA Region V encouraged minimills to self-disclose violations to the Agency to improve compliance among the minimills within its six states. The disclosures submitted by the companies and the multimedia inspections performed by Region V and states revealed environmental concerns involving uncollected K061 baghouse dust, slag cooling water puddles, electric arc furnace shop floor dust and

monitoring, reporting, and maintenance requirements. ***Contact Michael Calhoun, EPA HQ, (202) 564-6031.***

Update: Pork Producers

In November 1998, EPA and the National Pork Producers Council (NPPC) agreed to a comprehensive Clean Water Act Compliance Audit Program. The Clean Water Act audit program provides incentives for pork producers to undertake voluntary comprehensive on-farm environment assessments by greatly reducing penalties for any CWA violations that are promptly disclosed and corrected

under this program.

Since the start of the program, EPA has entered into a total of 239 agreements and received 154 reports with no violations reported.

The NPPC, which represents pork producers nationally, plans to have independent auditors conduct audits nationwide to improve environmental management practices and assure compliance with the CWA. ***Contact Kate Anderson, EPA HQ, (202) 564-4016.***

